SUPREME COURT OF THE UNITED STATES.

No. 238.

CYRUS R. CRANE, PLAINTIFF IN ERROR,

vs.

HIRAM WALKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Vermont, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Hiram Walker and Cyrus R. Crane, manifest error hath happened, to the great damage of the said Cyrus R. Crane, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings afore-

2 said being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 31st day of July, A. D. 1866, and of the independence of the United States the ninety-first.

[SEAL.] B. B. SMALLEY,
Clerk of the Circuit Court for the District of Vermont.

Endorsed:

In error. Cyrus R. Crane *vs.* Hiram Walker. Writ of error. Dudley C. Denison, U. S. dist. att'y for dist. of Vermont, for pl'ff in error. John Prout, Dan'l Roberts, for pl'ff in error.

Filed August 4th, 1866. B. B. Smalley, clerk.

[50-cent int. rev. stamp.]

3 UNITED STATES OF AMERICA, *ss:*

To Hiram Walker, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Vermont, wherein Cyrus R. Crane is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David A. Smalley, judge of the circuit court of the United States for the district of Vermont, this 31st day of July, A. D. 1866.

D. A. SMALLEY,
Judge.

Endorsed:

In error. Cyrus R. Crane *vs.* Hiram Walker. Citation to said Hiram Walker.

Filed August 4th, 1866. B. B. Smalley, clerk.—(Copy.)

STATE OF VERMONT,
Chittenden County, ss:

To any sheriff or constable in the State, greeting:

By the authority of the State of Vermont, you are hereby commanded to attach the goods, chattels, or estate of Cyrus R. Crane, of Rutland, to the value of five thousand dollars, and him notify thereof, according to law; and for want thereof, take his body, and him safely keep, so that you have him to appear before the county court, next to be held at Burlington, within and for the county of Chittenden, on the last Tuesday in September, A. D. 1864, then and there, in said court, to answer unto Hiram Walker, of Burlington, in the county of Chittenden, in a plea of trespass, for that the said defendant heretofore, to wit, on the third day of August, A. D. 1864, at Rutland aforesaid, with force and arms, assaulted the said plaintiff, and then and there seized and laid hold of the said plaintiff, and with great force pulled and dragged about, and pushed the said plaintiff; and, also, then and there forced and compelled
5 the said plaintiff to go from and out of a certain hall and stairway of a certain building in said Rutland into the public street, then and there and then forced and compelled him to go, in an ignominious manner, as a prisoner under guard, in and along divers public streets in said Rutland to the common jail of said Rutland county, situate in said Rutland, and then and there imprisoned the said plaintiff, and kept him imprisoned and detained therein, without any reasonable or probable cause whatever, for a long space of time, to wit: for the space of two hours then next following, and thereupon then and there forced and compelled the plaintiff, as a prisoner, to go in and along certain public streets, in said Rutland, to and in to a certain basement cellar and dungeon, in a certain building in said Rutland, and then and there kept the prisoner for a further great space of time, to wit: for the space of two hours then next following, contrary to the laws and customs of this State, and against the will of the said plaintiff, whereby the said plaintiff was
6 then and there not only hurt, bruised, and injured, but was also thereby greatly exposed and injured in his feelings, credit, and circumstances, to wit, at said Rutland. And other wrongs then and there did to the plaintiff, and against the peace.

And, also, for that the said defendant, on the day and year aforesaid, at said Rutland, with force and arms, made another assault on the plaintiff, and then and there again beat, pushed, and dragged the plaintiff about, and then and there again imprisoned him, and kept and detained him in prison there, without any reasonable or probable cause whatsoever, for a long time, to wit: for the space of six hours then next following, contrary to the laws and customs of

this State, and against the will of the plaintiff. And other wrongs to the said plaintiff then and there did, and against the peace.

And, also, for that the said defendant, on the day and year aforesaid, at said Rutland, made another assault on the plaintiff, and then and there, with force and arms, pushed and dragged about the plaintiff, and hurt and bruised him, and ill-treated him. And
7 other wrongs to the plaintiff then and there did, and against the peace.

All to the damage of the plaintiff, as he says, five thousand dollars, for the recovery of which, with just cost, the plaintiff brings suit.

Fail not, but make service and return according to law.

Dated at Burlington, in said county of Chittenden, this 23d day of August, in the year of our Lord one thousand eight hundred and sixty-four.

A. J. HOWARD,
Deputy Clerk.

Geo. F. Edmunds recognized in thirty dollars to the defendant, as surety for costs of prosecution, in due form of law.

Before me.

A. J. HOWARD,
Deputy Clerk.

8 STATE OF VERMONT,
Rutland county, ss:

At Rutland, August 31st, 1864, I there served this writ on the within named defendant by taking his body, and at his request, I delivered to him a true copy thereof.

Attest: N. B. FLANAGAN, *Sheriff.*

A true copy.

Attest: N. B. FLANAGAN, *Sheriff.*

Endorsed: Copy.—Hiram Walker *vs.* C. R. Crane. Ch. C. court, Sept. T., 1864. Edmunds, att'y. James M. Slade, B. F. Morgan, A. C. Brown, bail. 24th Fe'y 1864.

[5-cent int. rev. stamp, A. J. H., Aug. 22, 1864.]

9 In Chittenden county court, September term, 1864.

HIRAM WALKER
vs.
CYRUS R. CRANE.

Defendant's petition to remove the aforesaid cause for trial to the United States circuit court.

To the hon. Chittenden county court, now in session:

Your petitioner, Cyrus R. Crane, of Rutland, in the county of Rutland, and State of Vermont, at the time of entering his appearance in the above-entitled cause, in said Chittenden county court,

and at the term of said court to which the said cause is made returnable, comes and shows to the said court, that on the 23d day of August, A. D. 1864, the said Hiram Walker, of Burlington, in said county of Chittenden, prayed out his writ of attachment of that date against your petitioner, signed by A. J. Howard, deputy clerk, made returnable before said Chittenden county court, to be holden at Burlington, in said Chittenden county, on the last Tuesday of
10 September, A. D. 1864, declaring in a plea of tresspass for an assault, battery and imprisonment of the said Walker by your petitioner, and demanding in damages the sum of five thousand dollars, and which was duly served on your petitioner, and entered in said county court, which cause is now pending therein, as from the said writ remaining among the files of said county court, will more fully appear.

And your petitioner further shows and says, that as to the said supposed assault, battery and imprisonment, or wrongs and injuries declared upon in the several counts of the said declaration of the said Hiram Walker, they were done and committed by your petitioner, during the present rebellion, and on or about the 3d day of August, A. D. 1864, at Rutland, in the county of Rutland, by virtue and under authority derived from and exercised by the President of the United States, and the acts of Congress, and by virtue and under an order issued by Brigadier General James B. Fry, Provost Marshal General of the United States, and by Brigadier General T.
11 G. Pitcher, Assistant Provost Marshal General of the United States for the State of Vermont, and which order so issued was given your petitioner, and is as follows, to wit:

"You will not, under any circumstances, permit substitute brokers in or about your office. You will also exclude all lawyers, doctors, or others not having legitimate business before the board of enrollment, and permit no person to interfere with or impede your business, and if you are threatened with violence to arrest such persons at once."

And your petitioner further shows and says, that the aforesaid order was issued as aforesaid, on or about the 15th day of July, A. D. 1863, and ever since has been and now remains in force. That at the time when the said supposed wrongs and injuries in the said declaration mentioned, were done and committed by your petitioner, he was and ever since has been provost marshal in and for the first congressional district of the State of Vermont, and during all that time was, as such in the military service of the United States, subject to the rules and regulations adopted for the government of the
12 Bureau of the Provost Marshal General of the United States, and subject to and bound to obey and execute the orders of his superior officers.

That during all that time your petitioner kept and had his provost marshal office in Rutland, in said first congressional district for the transaction of business pertaining to his said office, and connected with the military service of the United States, and which provost marshal office was kept in the United States government building at said Rutland.

And your petitioner further shows and says, that previous to and at the time when the said supposed wrongs and injuries, in the said declaration mentioned, are alleged to have been done and committed by your petitioner, that he the said Hiram Walker, the plaintiff in said suit, was a substitute broker, and was also, at the time the said supposed wrongs and injuries are alleged to have been committed in his said declaration, about the provost marshal's office of your petitioner, to wit: on the stairway leading to said office from the
13 public hall of the post-office and United States court-house building in said Rutland, and near the door of your petitioner's office in said Rutland, and had been in charge of a substitute, then in said Rutland for the army of the United States, and who was not liable to enrolment or draft, and whom he had been then and there endeavoring to dispose of for his own pecuniary advantage and profit, and for the relief of some enrolled person, and to have accepted as a substitute in the army of the United States; and was also then and there, as a substitute broker, interfering with and impeding the business of your petitioner and his clerk's in mak- and correcting the enrolment of men subject to a draft in said first congressional district.

And your petitioner also says, that then and there, he requested the said Hiram Walker, he being about the office of your petitioner as aforesaid, and a substitute broker, for the purpose aforesaid, to depart from and leave said stairway leading to your peti-
14 tioner's office, and to no longer remain in and about said provost marshal's office; with which request of your petitioner, the said Hiram Walker refused to comply, or to depart therefrom, but resisted with force your petitioner in endeavoring to remove him therefrom, and then and there threatened your petitioner with personal violence, when your petitioner did and committed the said supposed wrong and injuries in the said declaration mentioned, and arrested the said Hiram Walker, as he lawfully might, and which was done under the authority aforesaid, and in execution of said orders, and issued as aforesaid, and not otherwise.

And your petitioner says, that he desires to have the said cause and so commenced as aforesaid against him by the said Hiram Walker, and pending in said Chittenden county court removed to the next circuit court of the United States, to be holden at Rutland, within and for the district of Vermont, on the 3d day of October, A. D. 1864.

And your petitioner hereby offers good and sufficient se-
15 curity, in such sum as the said county court shall direct, and order for his filing in said circuit court, on the first day of its session, copies of the process in said action or suit and proceedings thereon, and for his, your petitioners, appearance in said circuit court, and for entering special bail in said cause if required, as required by act of Congress, approved March 3, 1863.

And your petitioner prays said county court to accept surety, and offered as aforesaid, and to proceed no further in said cause or suit,

and at the term of said court to which the said cause is made returnable, comes and shows to the said court, that on the 23d day of August, A. D. 1864, the said Hiram Walker, of Burlington, in said county of Chittenden, prayed out his writ of attachment of that date against your petitioner, signed by A. J. Howard, deputy clerk, made returnable before said Chittenden county court, to be holden at Burlington, in said Chittenden county, on the last Tuesday of
10 September, A. D. 1864, declaring in a plea of tresspass for an assault, battery and imprisonment of the said Walker by your petitioner, and demanding in damages the sum of five thousand dollars, and which was duly served on your petitioner, and entered in said county court, which cause is now pending therein, as from the said writ remaining among the files of said county court, will more fully appear.

And your petitioner further shows and says, that as to the said supposed assault, battery and imprisonment, or wrongs and injuries declared upon in the several counts of the said declaration of the said Hiram Walker, they were done and committed by your petitioner, during the present rebellion, and on or about the 3d day of August, A. D. 1864, at Rutland, in the county of Rutland, by virtue and under authority derived from and exercised by the President of the United States, and the acts of Congress, and by virtue and under an order issued by Brigadier General James B. Fry, Provost Marshal General of the United States, and by Brigadier General T.
11 G. Pitcher, Assistant Provost Marshal General of the United States for the State of Vermont, and which order so issued was given your petitioner, and is as follows, to wit:

"You will not, under any circumstances, permit substitute brokers in or about your office. You will also exclude all lawyers, doctors, or others not having legitimate business before the board of enrollment, and permit no person to interfere with or impede your business, and if you are threatened with violence to arrest such persons at once."

And your petitioner further shows and says, that the aforesaid order was issued as aforesaid, on or about the 15th day of July, A. D. 1863, and ever since has been and now remains in force. That at the time when the said supposed wrongs and injuries in the said declaration mentioned, were done and committed by your petitioner, he was and ever since has been provost marshal in and for the first congressional district of the State of Vermont, and during all that time was, as such in the military service of the United States, subject to the rules and regulations adopted for the government of the
12 Bureau of the Provost Marshal General of the United States, and subject to and bound to obey and execute the orders of his superior officers.

That during all that time your petitioner kept and had his provost marshal office in Rutland, in said first congressional district for the transaction of business pertaining to his said office, and connected with the military service of the United States, and which provost marshal office was kept in the United States government building at said Rutland.

And your petitioner further shows and says, that previous to and at the time when the said supposed wrongs and injuries, in the said declaration mentioned, are alleged to have been done and committed by your petitioner, that he the said Hiram Walker, the plaintiff in said suit, was a substitute broker, and was also, at the time the said supposed wrongs and injuries are alleged to have been committed in his said declaration, about the provost marshal's office of your petitioner, to wit: on the stairway leading to said office from the
13 public hall of the post-office and United States court-house building in said Rutland, and near the door of your petitioner's office in said Rutland, and had been in charge of a substitute, then in said Rutland for the army of the United States, and who was not liable to enrolment or draft, and whom he had been then and there endeavoring to dispose of for his own pecuniary advantage and profit, and for the relief of some enrolled person, and to have accepted as a substitute in the army of the United States; and was also then and there, as a substitute broker, interfering with and impeding the business of your petitioner and his clerk's in mak- and correcting the enrolment of men subject to a draft in said first congressional district.

And your petitioner also says, that then and there, he requested the said Hiram Walker, he being about the office of your petitioner as aforesaid, and a substitute broker, for the purpose aforesaid, to depart from and leave said stairway leading to your peti-
14 tioner's office, and to no longer remain in and about said provost marshal's office; with which request of your petitioner, the said Hiram Walker refused to comply, or to depart therefrom, but resisted with force your petitioner in endeavoring to remove him therefrom, and then and there threatened your petitioner with personal violence, when your petitioner did and committed the said supposed wrong and injuries in the said declaration mentioned, and arrested the said Hiram Walker, as he lawfully might, and which was done under the authority aforesaid, and in execution of said orders, and issued as aforesaid, and not otherwise.

And your petitioner says, that he desires to have the said cause and so commenced as aforesaid against him by the said Hiram Walker, and pending in said Chittenden county court removed to the next circuit court of the United States, to be holden at Rutland, within and for the district of Vermont, on the 3d day of October, A. D. 1864.

And your petitioner hereby offers good and sufficient se-
15 curity, in such sum as the said county court shall direct, and order for his filing in said circuit court, on the first day of its session, copies of the process in said action or suit and proceedings thereon, and for his, your petitioners, appearance in said circuit court, and for entering special bail in said cause if required, as required by act of Congress, approved March 3, 1863.

And your petitioner prays said county court to accept surety, and offered as aforesaid, and to proceed no further in said cause or suit,

and so commend as aforesaid, but to make such further order as may be necessary to remove said suit into said circuit court.

CYRUS R. CRANE.

Sept. 27, 1864.

I, Cyrus R. Crane, of Rutland, in the county of Rutland, and State of Vermont, of lawful age, on oath say, that the facts set forth and stated in the foregoing petition, subscribed by me, are according to truth.

CYRUS R. CRANE.

16 STATE OF VERMONT, *Rutland county, ss:*

At Rutland, in said county, on this 27th day of September, A. D. 1864, personally appeared, Cyrus R. Crane, and made oath that the facts set forth in his foregoing affidavit are true.

Before me.

JOHN PROUT, *Master in Ch'y.*

{ 5 cent. stamp, J. P., }
{ Sept. 27, '64. }

I, Daniel Roberts, of Burlington, in the county of Chittenden, on oath say, that on this 29th day of September, 1864, I delivered Hiram Walker a true copy of the foregoing petition, together with a a notice thereto attached, and which notice is in the words following, to wit:

"The petitioner, Hiram Walker, of Burlington, in the county of Chittenden, will take notice that the petition, of which the foregoing is a true copy, will be brought on for a hearing at the present
17 term of Chittenden county court, (September term, 1864,) by the petitioner.

"Burlington, Sept. 27, 1864.

"PROUT & DUNTON,
"*Att'ys of Petitioner.*
"DANIEL ROBERTS."

Subscribed and sworn to this 29th day of September, 1864, before me.

J. S. ADAMS, *Clerk.*

{ 5. J. S. A. 5. }
{ 5. Sep. 29, 1864. 5. }

18 Endorsed: Hiram Walker vs. Cyrus R. Crane. Defendant's petition to remove cause into United States circuit court. Chitco. court, Sept. T., 1864. Prout & Dunton, att'ys for petitioner. Office copy.

19 Chittenden county court. Sept. term, 1864.

HIRAM WALKER
vs.
CYRUS R. CRANE.

The defendant in the above-entitled cause, having filed his petition in this court, and at the present term thereof, praying that said

cause be removed for trial to the next circuit court of the United States for the district of Vermont, and which petition is duly verified by the affidavit of the said defendant; and the said defendant offering good and sufficient security for his filing in said circuit court, on the first day of its session, copies of the process in said suit, and other proceedings thereon against him, and for his, the said defendants, appearance in said circuit court, and entering special bail therein, according to the provisions of the fifth section of an act of Congress, approved March 3, 1863.

Therefore, it is ordered by the court that the bond and security of this date, so offered by the said defendant, as aforesaid, be accepted and filed in court for the benefit of said plaintiff, and that the said cause be removed to the circuit court of the United States, in and for the district of Vermont, next to be holden at Rutland, in said district, on the 3d day of October, A. D. 1864, and that the bail of the defendant be discharged.

Done in court this 1st day of October, A. D. 1864.

J. PIERPOINT,
Presiding Judge.

STATE OF VERMONT, *Chittenden county, ss:*

I, J. S. Adams, clerk of the county court, for the county of Chittenden, in the State of Vermont, the same being a court of record, and having a seal as hereto attached, do hereby certify that the above and foregoing is a true and correct copy of the process and other proceedings in the case Hiram Walker *vs.* Cyrus R. Crane, brought to and entered in said county court, at a term thereof, holden at Burlington, within and for said county, on the 4th Tuesday of September, A. D., 1864.

In testimony whereof, I have hereunto affixed the seal of said court, and subscribed my name at Burlington, in said Chittenden county, this 1st day of October, A. D. 1864.

[L. S.] J. S. ADAMS, *Clerk.*

[5-cent stamp.]

STATE OF VERMONT, *Chittenden county, ss:*

I, J. Pierpoint, judge of the supreme court of the State of Vermont, and ex-officio chief and presiding judge of Chittenden county court, the same being a court of record and having a seal, do hereby certify that J. S. Adams, who has signed the above certificate, was, at the time of signing the same, and still is, clerk of Chittenden county court; that his signature thereto is genuine; that his attestation is in due form and full faith, and credit is thereunto given in all the courts of this State, and that the seal thereunto affixed is the seal of said court.

Given under my hand, this first day of October, A. D. 1864, at Burlington, in said county of Chittenden.

J. PIERPOINT, *Presiding Judge.*

[5 cent. stamp. J. P.]

Endorsed: Hiram Walker vs. Cyrus R. Crane. Exemplification of record. Ch. co. court. Filed 3d October, 1864. B. B. Smalley, clerk.

23 Circuit Court of the United States for the district of Vermont.—July term, 1865.

HIRAM WALKER
vs.
CYRUS R. CRANE.

The above-named cause, transferred from the county court for the county of Chittenden and State of Vermont, was entered by the plaintiff, and by consent of parties was continued to the next regular term of said court.

GEO. F. EDMUNDS, ESQ.,
Att'y for Pl'ff.
JOHN PROUT & DAN'L ROBERTS, ESQ.,
Att'ys for Deft.

HIRAM WALKER
vs.
CYRUS R. CRANE. } October term, 1865.

Said cause having been set down for trial on defendant's plea of not guilty, came on for trial by jury duly, summoned and empaneled, and upon the testimony adduced, the arguments of counsel and charge of Hon. D. A. Smalley, presiding judge, the said jury returned their verdict in form following:

"In the above-entitled cause the jury, on their oaths, say
24 that the defendant is guilty as in the declaration alleged, and they find for the plaintiff to recover the sum of one thousand dollars and his costs."

And thereupon, the defendant filed his motions to set aside said verdict, and for a new trial for misdirection and other errors of the judge in said trial, upon a case, and exceptions to be drawn up and settled; and upon such motions said cause was further continued to the next regular term of said court.

Circuit court of the United States, July term, 1866.

HIRAM WALKER
vs.
CYRUS R. CRANE.

And now at this term said cause came on to be heard upon the defendant's motion to set aside said verdict, and for a new trial upon the case made, and the exceptions as hereafter stated, and it was adjudged by the court that the defendant take nothing by his
25 motion, and that the plaintiff have judgment upon said verdict to recover of the defendant the sum of one thousand dollars and his costs.

And thereupon, Dudley C. Dennison, district attorney of the United States for the district of Vermont, files in open court his motion in behalf of said defendant, in the words and figures following, to wit:

Circuit court of the United States, for the district of Vermont.

HIRAM WALKER
vs.
CYRUS R. CRANE.

D. C. Dennison, district attorney, represents to the court here, that he has been directed by the attorney general of the United States to bring and prosecute a writ of error, in behalf of said Cyrus R. Crane, from the judgment of said court in this cause, with the consent of said Crane. Wherefore, the said Crane now consenting thereto, the said district moves the court here, that he be
26 permitted in behalf of said Crane to bring and prosecute such writ of error.

DUDLEY C. DENNISON,
U. S. District Attorney for Dist. of Vt.

Which matter being considered, said motion was granted by the court, and execution in the meantime is ordered to be stayed.

Bond filed; citation to the plaintiff's copy of writ of error, and writ of error brought.

The following is a copy of the case and exceptions:

7 United States circuit court, 2d circuit district of Vermont, Term holden at Rutland, Oct. 3d, 1865.

HIRAM WALKER
vs.
CYRUS R. CRANE.

This was an action of trespass for an assault and battery, and false imprisonment, originally brought returnable to the county court for the county of Chittenden and State of Vermont, by writ dated August 23, 1864, and being returned and entered in said court at the September term thereof, 1864, the defendant filed his petition for the removal of said cause to this court, agreeably to section 5 of the act of Congress entitled, "An act relating to habeas corpus and regulating judicial proceedings in certain cases," approved March 3d, 1863, and such proceedings were had agreeably to said act, that said cause was removed, and transferred into this court, and at the present term of this court said cause came on for trial by the jury upon issue, joined to the defendant's plea of not guilty.

(The proceedings in said county court, as per copies of the
28 process and other proceedings filed in this court, and the pleadings in the cause are made part of the case.)

29 "On trial the plaintiff gave evidence tending to show that he was, on and before the 2d of August, 1864, a manufacturer in Burlington, Vermont, and had at that time a man in his employ named Dike, who was liable to military duty, and whose home was in the town of Starksboro', Vermont. That the town of Starksboro' were then offering to pay to any person, upon their enrol ment, who

would put into the United States service a substitute who should be credited to the quota of that town, the sum of 900 dollars, as bounty. That Dike applied to the plaintiff to assist him in obtaining a substitute, to be credited to Starksboro', so as to relieve himself from liability to draft, and to avail himself in so doing of the bounty offered by that town. And proposed to pay the plaintiff for his services in obtaining the substitute. That the plaintiff declined to accept any compensation, but agreed to assist Dike in obtaining the substitute.

30 "That soon afterward the plaintiff was called on at Burlington by one Norton, of Champlain, N. Y., with whom he had no previous acquaintance, but who had been informed that the plaintiff desired to procure a substitute. That Norton was then on his way to Rutland with three Frenchmen from Canada, with whom he had contracted that they should enlist in the U. S. service, and had had some correspondence with the selectmen of Rutland relative to furnishing three men upon the quota of that town. That the plaintiff and Norton concluded an agreement that one of the men should be enlisted as a substitute for Dike, and credited to the town of Starksboro', and that the plaintiff should pay Norton therefor the sum of nine hundred dollars when the man should be enlisted and sworn in.

That on the next day after the making of this agreement the plaintiff accompanied Norton and the men to Rutland for the purpose of getting the substitute for Dike enlisted and credited. That on their arrival some considerable discussion and negotiation took place between Norton and the authorities of Rutland, in which the plaintiff took no part, relative to a bargain for furnishing the other two men upon the quota of Rutland. [That while this was going on the plaintiff was called on by one N. P. Simonds, who was then engaged in and about the defendants office, and passing freely in and out, and who said he was a United States recruiting agent, and offered to put the

31 substitute in for the plaintiff for $100, and said he was the only man in Rutland who could put a substitute in through that office, and intended to make $100 per head off the men. That plaintiff declined this proposition, but subsequently, after watching the proceedings there for some time, offered Simonds $25 to get his man enlisted as a substitute for Dyke, which offer Simonds accepted."]

So much of the foregoing evidence as is included in brackets was objected to by the defendant and admitted by the court, to which the defendant excepted.

That soon after the men brought by Norton were taken in for examination, and two of them having passed and been accepted, Simonds spoke to the plaintiff and told him it was all right, and to go up stairs to the provost marshal's office and pay off his man. That the plaintiff thereupon started with the man to ascend the stairs in the United States post-office building, which stairs led from the public room in the post-office to the rooms in the second story, occupied by the provost marshal's office; and when he got up some distance was met by the defendant, whom he did not then know, who took hold of his arm and asked him where he was going. That the

plaintiff replied he was going up stairs with those men. That the defendant then said, "Go down stairs!" "You are a substitute broker!" and shoved him down three or four steps. That plaintiff replied, "I am not a substitute broker. My name is Walker, from Burlington, and I came to put in a substitute for a man named
32 Dyke, from Starksboro'." That defendant still insisted he was a substitute broker, and shoved him down stairs again twice, three or four steps each time, till he reached the bottom. That plaintiff then said to him, "If you will come out of doors I will show you something." Defendant asked, "What will you show me?" Plaintiff replied, "I will show you how a gentleman defends himself when he is assailed." That defendant thereupon called one Briggs, who stood near, and ordered him to take the plaintiff to jail. That plaintiff enquired what he was taken to jail for, and the defendant said, "for violating the provisions of the enrolment act, and resisting the provost marshal in the discharge of his duty." That Briggs took the plaintiff to the county jail in Rutland and imprisoned him there in the common prison, then occupied by a number of criminals and vagrants, where he remained about ten minutes. That while on the way to jail the plaintiff offered to the officer to furnish bail in any amount for his appearance at any time, which the officer declined to receive. That when the plaintiff had been in jail about ten minutes, defendant sent a couple of soldiers for him, who brought him back to the post office-building, and by direction of the defendant took him into the cellar of the building where there were cells used for United States' prisoners. That defendant went below and had a long conversation with the plaintiff, charging him with being a bounty broker, with having lied to the defendant, and making
33 other remarks of a similar character, and demanding that he should make an apology.

That on plaintiff's stating what his business was with the provost marshal, and that Simonds had requested him to go up stairs, defendant said that would make a difference, and sent for Simonds and enquired of him as to that fact. To which Simonds replied that he did not remember whether he had asked the plaintiff to go up stairs or not.

That defendant finally discharged the plaintiff from custody, saying that he did so on account of the respect he entertained for plaintiff's father.

That the man agreed for by the plaintiff, as aforesaid, was afterward, on the same day, enlisted as a substitute for Dyke, and that the plaintiff was sent for by the defendant to come to his office and pay the man, which he did, and also that he paid Simonds $25 for his services.

The plaintiff further testified that he had never, in any instance, had anything whatever to do with procuring substitutes, or obtaining men for enlistment except on this single occasion, and never had any interest or share in any such business, directly or indirectly. That he did not know Norton until applied to by him, as above stated, and had nothing to do with him or his recruits except to obtain the

substitute for Dyke, as above stated, and no interest or share otherwise in the disposal of the men, nor in the money received therefor.

34 The defendant introduced in evidence the following document.

1. His commission as provost marshal, dated April 28, 1863.

2. Special orders of the War Department, No. 221, detailing Gen. Thos. G. Pitcher as assistant to the provost marshal general for the State of Vermont, dated May 18, 1863.

3. The Revised Regulations issued by the War Department, May 1, 1864, for the government of the Bureau of the Provost Marshal General, particularly articles 1, 2, 19, 22, 24, 27, 32.

4. Regulations from the War Department, dated Sept. 29, 1863, particularly section III.

5. Circular No. 28, dated Jan. 16, 1863, from the office of the Provost Marshal General.

(This paper was objected to by the plaintiff and was received by the court subject to the objection.)

6. The call of the President for 500,000 men, dated July 18, 1864.

7. General orders constituting the Eastern department, dated Jan. 3, 1863, and authorizing appointments of recruiting agents.

8. Proclamation of the President suspending the privilege of the writ of habeas corpus, dated Sept. 15, 1863.

9. Letters from Provost Marshal General to defendant, approving N. P. Simonds appointment by defendant as recruiting agent.

All of which papers are made part of the case, and copies thereof are hereto appended.

35 The defendant further gave evidence tending to show that Gen. Pitcher had acted under his said appointment as ass't provost marshal gen. for Vermont, from the date thereof, and had received and communicated to the defendant officially as instructions, papers 3, 4, and 5, above mentioned. And that defendant had received a verbal order from Gen. Pitcher to exclude from his office all bounty brokers and other persons not having proper business with the office, and to arrest them in case of threats or refusal to obey orders.

That the defendant had acted as provost marshal under his said appointment from the dates thereof, having his office at Rutland, in the building belonging to the United States, and occupied as a United States court-house and post-office, under a session of the State of Vermont under an act entitled "An act ceding to the United States exclusive jurisdiction over a site for a court-house and post-office in the towns of Rutland and Windsor." Approved Nov. 18, 1856. That he occupied two rooms therein, one below for the examination of recruits, and one in the second story for the general business of the office, the communication between which was the staircase before mentioned, leading from the public room in the post-office. That it was necessary for him frequently to pass up and down between the two rooms. That there were usually a good many people there having business with his office, and that such

was the case on the day of the transaction in question, and that he was then engaged in correcting the enrolment and receiving recruits.

The defendant testified further, that after the men above referred to had been examined and passed, and had gone up stairs to be sworn in, he overtook the plaintiff on the stairs going up. That he asked the plaintiff if he had any business at the office, and he
36 replied that he had not. That the defendant then told him the office was very much crowded, and they were very busy, and he wanted him to go down stairs. That the plaintiff did not move to go, and the defendant said, "You are a substitute broker, and my orders are not to allow one in or about my office, and I want you to go down these stairs, and now." That plaintiff replied, "I am Hiram Walker, of Burlington." To which defendant replied, "I know who you are, and have known you before," and then shoved the plaintiff down stairs, two or three stairs at a time, the plaintiff stopping and clinging to the railing. That the plaintiff then said, "If you will come out here, Capt. Crane, I will settle this with you." That defendant asked him what he would do, and he replied that he would defend himself. That defendant then arrested him; and to his inquiry what he was arrested for, replied for threatening the defendant in the discharge of his official duties. That the defendant called on Levi Briggs, a deputy sheriff, to take the plaintiff to jail; and on the plaintiff's enquiring by what authority, the defendant said by virtue of the enrolment act and his instructions to arrest those who threatened him in performance of his duties.

The defendant further testified, that he understood the above language of the plaintiff to convey a threat, and feared the plaintiff would assault him when he should afterwards be passing up and down in the course of his business. He further testified and
37 gave evidence tending to show that the plaintiff had been pointed out to him as a bounty broker, and as the one who had come with the three men above named, and at the time of the assault he supposed the plaintiff was a bounty broker; and in this connection offered to prove that there was a brother of the plaintiff who was a bounty broker, and that he supposed this to be the man. This offer was objected to by the plaintiff, and excluded by the court; to which the defendant excepted.

The defendant, also, introduced the said Simonds as a witness, who testified that the plaintiff did, in fact, attempt to negotiate with the authorities of Rutland for furnishing the other men brought by Norton, to be applied on the quota of that town, and professed to have an interest in the disposition of the men.

Said Simonds, also, denied that he told the plaintiff that he was the only man who could put in a recruit through that office, or offered to put the man in for $100; and testified that he told the plaintiff he could go and put the man in himself, and would be well received; but that plaintiff declined to do so, and offered him $25 to do the business.

He further testified he was appointed a U. S. recruiting agent in

1863, receiving a premium under regulations of the War Department of Sept. 29, 1863, which premium was taken away in July, 1864; but that his appointment was not revoked until Sept., 1864,
38 and that he continued, up to that time, to act as recruiting agent, and acted in connection with the provost marshal's office, and was employed by the town of Rutland to assist in filling its quota.

On cross-examination of Simonds, the plaintiff sought to prove by him that he was himself, both before and after the 3d of August, 1864, largely engaged in business at that office as a bounty and substitute broker, and engaged in procuring and furnishing recruits for towns and individuals, under contract, by which he received one sum for the recruit furnished, and paid the recruit a less sum. That he, in some instances, received from the towns the bounties voted by them for recruits, and then obtained the recruits as cheap as he could. That he made from $50 to $250, each, on the men he so furnished, by receiving as their bounties that amount more than he paid the recruits. That he had proposed to various persons, namely, to one William Walker, and one Artemas Powers, to go into partnership with them in the business of substitute and bounty brokers at that office. That he had been in partnership with one Shute, of Boston, in the business of furnishing naval recruits at the defendant's office, for which he received $1,000, each, and paid Shute $900. That he was, also, in the habit of receiving from towns and individuals who were liable to furnish recruits and substitutes, and who brought suitable men there to be enlisted for that purpose,
39 from $25 to $100 per man for his services in getting them accepted and enlisted; and had received these fees in many instances; and had received $50 from Norton for his services in getting accepted the other men brought by him on this occasion, who were enlisted. That, during all this time, he had free access to, and intimate communication with, the defendant's office; and that, in one or two instances, where parties bringing men had refused to pay him, their men had been rejected on the ground that enough of the bounty to be received was not to be paid to the recruit; and that it was known to defendant that Simonds was so acting as a substitute and bounty broker, as aforesaid, and receiving premiums and compensations, as aforesaid, during the time he was so acting.

To these enquiries, and to the offer to prove these facts, the defendant objected. But the enquiries were permitted by the court, and the defendant excepted; and the answers and the testimony of the witness tended to prove the foregoing facts. But the witness denied, as did, also, the defendant, that the defendant received any share of the money so derived; and further stated that the difference between himself and a bounty broker was, that his proceedings were approved by the department.

The defendant, on his cross-examination, stated that he considered a bounty broker to be one who was engaged in obtaining and
40 furnishing recruits at a profit, and who was not vouched for to him. If vouched for, he should not regard him as a

bounty broker; and if vouched for by Simonds, it would be sufficient.

Gen. Pitcher, upon his cross-examination, testified that after the call for 500,000 men above referred to was made, the recruiting agents received nothing from the government. That he (Gen. Pitcher) never authorized them, after that, to receive anything from individuals or from towns. That after the order of July 19, 1864, they were forbidden to receive any such payment. That he knew nothing of Simonds, except that he was a recruiting agent. That anything he did after 19 July, 1864, by which he received pay of towns or others, was a matter entirely between him and them.

The plaintiff, in reply, introduced further evidence tending to corroborate his statement of the conversation that took place between him and the defendant on the stairway at the time of the assault, and to contradict the statement of that conversation given by the defendant; and also denied, and gave evidence tending to disprove the statement of Simonds, both as to the conversation between him and the plaintiff, and as to the plaintiff taking any part in the disposition of the other men brought by Norton, and claiming to have any interest in, or connection with, them; and also denied, and gave evi-
dence tending to disprove the statement that he knew the
41 defendant, or called him by name at the time of the assault.

The defendant claimed as the law of the case, and requested the court to instruct the jury:

1. That the defendant was protected by the provisions of section 4, of the act of Congress, approved Mar. 3, 1863, entitled "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," and that the court should direct a verdict for the defendant.

2. That upon the evidence, and the law applicable to the case, the justification of the defendant was made out, and that the jury be instructed to return a verdict for the defendant.

3. That if the jury should find that the defendant, in the making of the assault, the arrest, and imprisonment, acted in good faith and without malice, and in the performance of the duties of his office in obedience to superior orders as then understood by him, and then publicly proclaimed, the jury should return a verdict for the defendant.

4. That if jury should find as in point 3, the plaintiff could not recover on the first count of his declaration.

5. That if the jury should find the defendant had good reason
42 to believe, from the conduct of the plaintiff, and from the information which had been communicated to the defendant, that the plaintiff was a bounty broker, and the defendant did so believe, the defendant, under his orders, is not liable to the plaintiff in this action for treating him as a bounty broker and excluding him from the approaches to the defendant's office.

6. That it was not necesssary to the defendant's justification of the assault upon the stairs, that he should have announced to the plaintiff who he was or his authority for ejecting the plaintiff.

The plaintiff's counsel having remarked to the jury, in the opening, that the case was one of great public importance, involving the vindication of the private rights and liberty of the citizens against arbitrary military power in comparison with which the plaintiff's individual injury became insignificant, and that in the assessment of damages this consideration should be attended to, and should contribute to enhance them; the defendant further requested the court to instruct the jury that this consideration was not an element which they should regard as going to increase the damages.

The court charged the jury upon the points involved in the requests substantially as follows:

43 That there were certain facts about which there was but little if any dispute.

That the defendant was a provost marshal and had an office in a building which belonged to the United States, and at the time of the transaction out of which this controversy grew, was engaged in the performance of his official duties therein; that the plaintiff wanted to have a person enlisted as a substitute for one Dike, and that he went to Rutland and started to go up into the defendant's office, aforesaid, for that purpose, and was pushed or forced down by the def't.

That after he got to the bottom of the stairs, the plaintiff said to the defendant, while still in the building, "if you will come down here I will show you how I will defend myself," or words to that effect; that the plaintiff then told one Briggs, who was standing near, and a deputy sheriff, to arrest the plaintiff and commit him to jail, and that said Briggs did so, where the plaintiff was confined a few minutes, when the defendant sent two soldiers for him, took him out of jail and brought him back to the building from whence he was first taken, when a conversation ensued between the defendant,

44 plaintiff, and one Simonds, which ended by the defendant's telling the plaintiff that he might go, and ordering him to be released.

The defendant claims that the civil law has been suspended in Vermont, in cases like this, and that martial law has been substituted therefor, and, that if the defendant was wrong, he should be tried by court martial.

The court, after explaining the difference between civil law and martial law, told the jury, that this claim of the defendant was unfounded, that the civil law was still in force in Vermont, and, that although the defendant was an officer in the military service of the United States and claimed to be acting in his official capacity, the plaintiff had a right to seek redress for wrongs or injuries such as he claimed to have sustained in this case from the def't; that if the jury found, from all the evidence, that when the plaintiff and defendant met on or at the top of the stairs, as described, the def't told the plaintiff to go down, that he did not want him there, and the plaintiff refused or declined to go, the defendant had the legal right to use so much force as was necessary to put him down.

That if the defendant had good reason to believe, and actually did believe, that what was said and done by the plaintiff after

45 he was pushed to the bottom of the stairs, was intended to be or was a threat or menace for the purpose of interfering with the defendant in the execution of his official duties as provost marshal, or in any way to deter him therefrom or molest him therein, the defendant was justified in ordering his, the plaintiff's, arrest and dedention in the manner stated by the witnesses.

That the jury, in coming to a conclusion upon that question, should carefully consider all the circumstances as they appear from the testimony and the surroundings of the parties at the time, and if they are satisfied that such language and conduct of the plaintiff did amount to such threat or menace as before described, that they would return a verdict for the defendant.

The court further instructed the jury, that the fourth section of the act of Congress, approved March 3d, 1863, would not, as claimed by defendant's counsel, of itself, protect the defendant or bar the plaintiff from his right of action, provided the jury found the facts to be as claimed by the plaintiff, as before stated, and for this trial the court charged that that section was inoperative and afforded no defense.

46 That if under these instructions the jury should find a verdict for the plaintiff they are bound to give him his actual damages, and, if they think the case requires it, they may give him exemplary damages.

Upon this point they will carefully examine all the evidence in the case and the arguments of counsel thereon, and if, after full consideration, they find that the defendant in causing the arrest and imprisonment of the plaintiff, was influenced by any motive other than the honest discharge of his official duty, they are at liberty to consider it in making up the verdict.

That this question is peculiarly within their province, and that if they found for the plaintiff that they would award him such damages as they thought justice required.

The jury returned a verdict for the plaintiff; damages $1,000, one thousand dollars.

To the refusal of the court to charge as the defendant requested and to the charge as made, the defendant excepts and the exceptions allowed.

47 [Copy.]

[No. 1]

WAR DEPARTMENT,
Washington, April 24th, 1863.

SIR: you are hereby informed that the President of the United States has appointed you provost marshal for the first district of the State of Vermont, with rank of captain of cavalry, in the service of the United States, to rank as such from the 24th day of April, one thousand eight hundred and sixty-three.

Immediately on receipt hereof, please to communicate to this department, through the Provost Marshal Gen'l of the U. S., your acceptance or non-acceptance of said appointment; and with your letter of acceptance, return the oath herewith enclosed, properly filled up,

subscribed and attested, and report your age, birth-place, and the State of which you are a permanent resident.

You will immediately report, by letter, to the Pro. Mar. Gen., and will proceed without delay to establish your headquarters at Rutland, Vermont. and enter upon your duties in accordance with such special instructions as you may receive from the Provost Marshal Gen'l.

(Signed) E. M. STANTON,
Secretary of War.

Official: A. G. O., Sept'r 6th, 1865.

S. F. CHALFIN,
Ass't Adj't Gen.

Cap. CYRUS R. CRANE,
Pro. Mar. 1st Dist. Vermont.

48 WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, May 18th, 1863.

[No. 2.] *Special orders, No.* 221.

[Extract.]

* * * *

23. Brigadier General Thomas G. Pitcher, U. S. volunteers, will proceed without delay to Montpelier, Vermont, and enter upon the duties of assistant to the Provost Marshal General of the United States, for the State of Vermont.

* * * *

By order of the Secretary of War:
(Signed) E. D. TOWNSEND,
Assistant Adjutant General.

Official.

R. WILLIAMS,
Ass't Adj't General.

Gen'l FRY, *Pro. Mar. Gen'l.*

49 *Exhibit No. 3.—Revised regulations, &c.*

SEC. 1. The officer detailed in each State or division to aid the War Department in securing uniformity in the execution of the enrolment act, shall keep himself well informed as to the condition of the department throughout the State or division. He shall, under the Provost Marshal General of the United States, exercise supervision over the provost marshals and their subordinates for the congressional districts of that State or division, and shall see, by personal inspection or by his inspectors, that boards of enrolment, and persons acting under them, attend faithfully and diligently to their duties.

SEC. 2. He shall communicate to them the orders and instructions of the Provost Marshal General, and see that they are promptly and efficiently executed, and shall, from time to time, give or transmit such instruction in accordance with these regulations, as hereinafter pre-

45 he was pushed to the bottom of the stairs, was intended to be or was a threat or menace for the purpose of interfering with the defendant in the execution of his official duties as provost marshal, or in any way to deter him therefrom or molest him therein, the defendant was justified in ordering his, the plaintiff's, arrest and dedention in the manner stated by the witnesses.

That the jury, in coming to a conclusion upon that question, should carefully consider all the circumstances as they appear from the testimony and the surroundings of the parties at the time, and if they are satisfied that such language and conduct of the plaintiff did amount to such threat or menace as before described, that they would return a verdict for the defendant.

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46 That if under these instructions the jury should find a verdict for the plaintiff they are bound to give him his actual damages, and, if they think the case requires it, they may give him exemplary damages.

Upon this point they will carefully examine all the evidence in the case and the arguments of counsel thereon, and if, after full consideration, they find that the defendant in causing the arrest and imprisonment of the plaintiff, was influenced by any motive other than the honest discharge of his official duty, they are at liberty to consider it in making up the verdict.

That this question is peculiarly within their province, and that if they found for the plaintiff that they would award him such damages as they thought justice required.

The jury returned a verdict for the plaintiff; damages $1,000, one thousand dollars.

To the refusal of the court to charge as the defendant requested and to the charge as made, the defendant excepts and the exceptions allowed.

47 [Copy.]

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You will immediately report, by letter, to the Pro. Mar. Gen., and will proceed without delay to establish your headquarters at Rutland, Vermont, and enter upon your duties in accordance with such special instructions as you may receive from the Provost Marshal Gen'l.

(Signed) E. M. STANTON,
Secretary of War.

Official: A. G. O., Sept'r 6th, 1865.

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SEC. 2. He shall communicate to them the orders and instructions of the Provost Marshal General, and see that they are promptly and efficiently executed, and shall, from time to time, give or transmit such instruction in accordance with these regulations, as hereinafter pre-

Copy with official alterations in red ink respectfully furnished, to be substituted for the copy without manuscript alterations heretofore furnished.

HENRY STONE,
Ass't Adj't Gen'l.

Official:
T. S. PITCHER,
Brig. Gen'l A. A. P. M'l G.

53 [No. 5.] WAR DEPARTMENT,
PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C. June 16, 1863.

[Circular, No. 28.]

The following opinion of Hon. William Whiting, solicitor of the War Department, has been ordered to be published by the Secretary of War:

Opinion.

"It is made the duty of the provost marshals 'to obey all lawful orders and regulations of the Provost Marshal General, and such as may be prescribed by law, concerning the enrolment and calling into service of the national forces.' Act March 3, 1863, section 7.

"The 25th section of the same act provides, 'that if any person shall resist any draft of men enrolled under this act into the service of the United States, or shall counsel or aid any person to resist any such draft, or shall assault or obstruct any officer in making such draft, or in the performance of any service in relation thereto, or shall counsel any person to assault or obstruct any such officer, or shall counsel any drafted men not to appear at the place of rendezvous, or willfully dissuade them from the performance of military duty as required by law, such person shall be subject to summary arrest by the provost marshal and shall be forthwith delivered to the civil authorities, and, upon conviction thereof, be punished by a fine not exceeding $500, or by imprisonment not exceeding two years, or by both of said punishments.'

"To do any act which will prevent or impede the enrolment of the national forces, (which enrolment is preliminary and essential to the draft,) is to prevent or impede the draft itself.

"The enrolment is a 'service to be performed by the provost marshal in relation to the draft.' It is not the act of drawing ballots out of a ballot-box itself, but it is 'in relation to it,' and is the first step that must by law be taken preparatory to draft. It is, therefore, clearly within the duty of the provost marshal to subject all persons who obstruct the enrolment, the meeting of the board, or any other proceeding which is preliminary and essential to the draft, to summary arrest, according to the provisions of section 25.

54 "There are many ways of obstructing officers in the performance of their 'services or duties in making, or in relation to, the draft,' without employing physical force. The neglect or refusal to do an act required by law to be done, may itself be such an 'obstruction' as to subject the offender to arrest.

"Suppose a person be found standing in a passage through which the drafting officers were required to enter into a place designated by law as the place for draft, and suppose that his standing in that place would prevent access by these officers to the place of draft. If they request him to move away, and he neglects or refuses so to do, for the purpose of preventing the draft, the non-performance of the act of removal would be itself an 'obstruction of the draft, or of an officer in the performance of his duty in relation to it.'

"Standing mute in civil courts, is, under certain circumstances, a punishable offence; and so, if a person, with intent to prevent the draft, refuses to give his true name when lawfully requested so to do by an officer whose legal duty is to ascertain and enroll it, it is an obstruction of that officer in the performance of one of his duties in relation to the draft. So, also, of the giving of false names with the same illegal intent, and the offender will, in either case, be subject to summary arrest by the provost marshal.

(Signed) "WILLIAM WHITING,
"*Solicitor of the War Department.*"
JAMES B. FRY,
Provost Marshal eneral.

Official:

T. S. PITCHER,
Brig. Gen'l A. A. P. M'l G.

55 [General Orders, No. 232.]

[SEAL.] WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE.
Washington, July 19, 1864.

For five hundred thousand volunteers, by the President of the United States of America.—A proclamation.

Whereas, by the act approved July 4, 1864, entitled "An act further to regulate and provide for the enrolling and calling out the national forces, and for other purposes," it is provided that the President of the United States may, "at his discretion, at any time hereafter, call for any number of men, as volunteers, for the respective terms of one, two, and three years, for military service," and "that in case the quota of, [or] any part thereof, of any town, township, ward of a city, precinct, or election district, or of a county not so subdivided, shall not be filled within the space of fifty days after such call, then the President shall immediately order a draft for one year, to fill such quota, or any part thereof, which may be unfilled;"

And whereas the new enrolment heretofore ordered is so far completed as that the aforementioned act of Congress may now be put in operation, for recruiting and keeping up the strength of the armies in the field, for garrisons, and such military operations as may be required for the purpose of suppressing the rebellion, and restoring the authority of the United States government in the insurgent States:

Copy with official alterations in red ink respectfully furnished, to be substituted for the copy without manuscript alterations heretofore furnished.

HENRY STONE,
Ass't Adj't Gen'l.

Official:
T. S. PITCHER,
Brig. Gen'l A. A. P. M'l G.

53 [No. 5.] WAR DEPARTMENT,
PROVOST MARSHAL GENERAL'S OFFICE,
Washington, D. C. June 16, 1863.

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"The 25th section of the same act provides, 'that if any person shall resist any draft of men enrolled under this act into the service of the United States, or shall counsel or aid any person to resist any such draft, or shall assault or obstruct any officer in making such draft, or in the performance of any service in relation thereto, or shall counsel any person to assault or obstruct any such officer, or shall counsel any drafted men not to appear at the place of rendezvous, or willfully dissuade them from the performance of military duty as required by law, such person shall be subject to summary arrest by the provost marshal and shall be forthwith delivered to the civil authorities, and, upon conviction thereof, be punished by a fine not exceeding $500, or by imprisonment not exceeding two years, or by both of said punishments.'

"To do any act which will prevent or impede the enrolment of the national forces, (which enrolment is preliminary and essential to the draft,) is to prevent or impede the draft itself.

"The enrolment is a 'service to be performed by the provost marshal in relation to the draft.' It is not the act of drawing ballots out of a ballot-box itself, but it is 'in relation to it,' and is the first step that must by law be taken preparatory to draft. It is, therefore, clearly within the duty of the provost marshal to subject all persons who obstruct the enrolment, the meeting of the board, or any other proceeding which is preliminary and essential to the draft, to summary arrest, according to the provisions of section 25.

54 "There are many ways of obstructing officers in the performance of their 'services or duties in making, or in relation to, the draft,' without employing physical force. The neglect or refusal to do an act required by law to be done, may itself be such an 'obstruction' as to subject the offender to arrest.

"Suppose a person be found standing in a passage through which the drafting officers were required to enter into a place designated by law as the place for draft, and suppose that his standing in that place would prevent access by these officers to the place of draft. If they request him to move away, and he neglects or refuses so to do, for the purpose of preventing the draft, the non-performance of the act of removal would be itself an 'obstruction of the draft, or of an officer in the performance of his duty in relation to it.'

"Standing mute in civil courts, is, under certain circumstances, a punishable offence; and so, if a person, with intent to prevent the draft, refuses to give his true name when lawfully requested so to do by an officer whose legal duty is to ascertain and enroll it, it is an obstruction of that officer in the performance of one of his duties in relation to the draft. So, also, of the giving of false names with the same illegal intent, and the offender will, in either case, be subject to summary arrest by the provost marshal.

(Signed) "WILLIAM WHITING,
"*Solicitor of the War Department.*"
JAMES B. FRY,
Provost Marshal General.

Official:

T. S. PITCHER,
Brig. Gen'l A. A. P. M'l G.

55 [General Orders, No. 232.]

[SEAL.] WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE.
Washington, July 19, 1864.

For five hundred thousand volunteers, by the President of the United States of America.—A proclamation.

Whereas, by the act approved July 4, 1864, entitled "An act further to regulate and provide for the enrolling and calling out the national forces, and for other purposes," it is provided that the President of the United States may, "at his discretion, at any time hereafter, call for any number of men, as volunteers, for the respective terms of one, two, and three years, for military service," and "that in case the quota of, [or] any part thereof, of any town, township, ward of a city, precinct, or election district, or of a county not so subdivided, shall not be filled within the space of fifty days after such call, then the President shall immediately order a draft for one year, to fill such quota, or any part thereof, which may be unfilled;"

And whereas the new enrolment heretofore ordered is so far completed as that the aforementioned act of Congress may now be put in operation, for recruiting and keeping up the strength of the armies in the field, for garrisons, and such military operations as may be required for the purpose of suppressing the rebellion, and restoring the authority of the United States government in the insurgent States:

Now, therefore, I, Abraham Lincoln, President of the United States, do issue this my call for five hundred thousand volunteers for the military service; provided, nevertheless, that this call shall be reduced by all credits which may be established under section eight of the aforesaid act, on account of persons who have entered the naval service during the present rebellion, and by credits for men furnished to the military service in excess of calls heretofore made.

Volunteers will be accepted under this call for one, two, or three years, as they may elect, and will be entitled to the bounty provided by the law for the period of service for which they enlist.

And I hereby proclaim, order, and direct that, immediately
56 after the fifth day of September, 1864, being fifty days from the date of this call, a draft for troops to serve for one year shall be had in every town, township, ward of a city, precinct, or election district, or county not so subdivided, to fill the quota which shall be assigned to it under this call, or any part thereof which may be unfilled by volunteers on the said fifth day of September, 1864.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD,
Secretary of State.

By order of the Secretary of War:
E. D. TOWNSEND,
Assistant Adjutant General.

Official:

Assistant Adjutant General.

57 *Circular No.* 85.

[No. 8.] WAR DEPARTMENT,
Provost Marshal General's Office,
Washington, D. C., September 17, 1863.

The Secretary of War orders that the following Act of Congress, and proclamation of the President, based upon the same, be published for the information of all concerned, and that the special instructions hereinafter contained for persons in the military service of the United States, be strictly observed.

An act relating to habeas corpus, and regulating judicial proceedings in certain cases, approved March 3, 1863.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during the present

rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue.

By the President of the United States.—A Proclamation.

Whereas, the Constitution of the United States has ordained that the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it; and, whereas, a rebellion was existing on the third day of March, 1863, which rebellion is still existing, and, whereas, by a statute, which was approved on that day, it was enacted by the Senate and House of Representatives of the United States in Congress assembled, that during the present insurrection the President of the United States, whenever, in his judgment, the public safety may require, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof; and, whereas, in the judgment of the President, the public safety does require, the privilege of the said writ shall now be
58 suspended throughout the United States, in the cases when, by the authority of the President of the United States, military, naval, and civil officers of the United States, or any of them, hold persons under their command, or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers, soldiers, or seamen enrolled, drafted, or mustered or enlisted in, or belonging to the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or the Rules and Articles of War, or the rules or regulations prescribed for the military or naval services by authority of the President of the United States, or for resisting a draft, or for any other offence against the military or naval service:

Now, therefore, I, Abraham Lincoln, President of the United States, do hereby proclaim and make known to all whom it may concern, that the privilege of the writ of habeas corpus is suspended throughout the United States, in the several cases before mentioned, and that this suspension will continue throughout the duration of the said rebellion, or until this Proclamation shall, by a subsequent one to be issued by the President of the United States, be modified or revoked. And I do hereby require all magistrates, attorneys, and other civil officers within the United States, and all officers and

others in the military and naval service of the United States, to take distinct notice of this suspension, and to give it full effect, and all citizens of the United States to conduct and govern themselves accordingly, and in conformity with the Constitution of the United States and the laws of Congress in such cases made and provided.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed, this 15th day of September, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth.

[L. S.] ABRAHAM LINCOLN.

By the President:

WM. H. SEWARD,
Secretary of State.

The attention of every officer in the military service of the United States is called to the above Proclamation of the President, issued on the 15th day of September, 1863, by which the privilege of the writ of habeas corpus is suspended. If, therefore, a writ of habeas corpus should, in violation of the aforesaid Proclamation, be sued out and served upon any officer in the military service of the United States, commanding him to produce before any court or judge, any person in his custody by authority of the President of the United States, belonging to any one of the classes specified in the President's
59 Proclamation, it shall be the duty of such officer to make known by his certificate, under oath, to whomsoever may issue or serve such writ of habeas corpus, that the person named in said writ "is detained by him as a prisoner under authority of the President of the United States."

Such return having been made, if any person serving, or attempting to serve, such writ, either by the command of any court or judge, or otherwise, and with or without process of law, shall attempt to arrest the officer making such return, and holding in custody such person, the said officer is hereby commanded to refuse submission and obedience to such arrest, and if there should be any attempt to take such person from the custody of such officer, or arrest such officer, he shall resist such attempt, calling to his aid any force that may be necessary to maintain the authority of the United States, and render such resistance effectual.

JAMES B. FRY,
Provost Marshal General.

60 WAR DEPARTMENT,
Provost Marshal General's Office,
[No. 9.] *Washington, D. C., October 13th,* 1863.

Captain C. R. Crane, provost marshal 1st dist. of V't, Rutland, V't:

CAPTAIN: I am directed by the Provost Marshal General to acknowledge receipt of your communication of the 1st inst., nominating

N. P. Simons and George Hopkins as recruiting agents, and to say in reply that their nomination is approved.

I am, captain, very respectfully, your obedient servant,

HENRY STONE, *Ass't Adj't General.*

61 The charge in all other respects being satisfactory to the defendant, and not excepted to.

THE UNITED STATES OF AMERICA, *District of Vermont, ss:*

I, B. B. Smalley, clerk of the circuit court of the United States of America, for the district of Vermont, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-one inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Hiram Walker against Cyrus R. Crane, as the same remain of record and on file in this office.

In testimony whereof, I have hereunto caused the seal of the said court to be *hereunto* affixed, at Burlington, in said Vermont district, in the second circuit, this sixth (6th) day of April, A. D. 1867, and of the independence of the United States the ninety-first.

[SEAL.] B. B. SMALLEY, *Clerk.*